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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KELLY EUGENE RHYNE,

Petitioner,

VS.

RENEE BAKER, Warden, et al.,

Respondents.

Case No. 3:06-cv-0082-LRH-VPC

STIPULATION AND ORDER

(Death Penalty Habeas Corpus Case)

18 The parties, petitioner Kelly E. Rhyne, and respondents, Warden Renee Baker, and
19 Attorney General Adam Paul Laxalt,¹ through counsel, hereby stipulate and agree as follows:

20 1) Pursuant to this Court's order filed May 21, 2008, staying the instant
21 proceeding pending exhaustion of state remedies, Docket No. 79, this Court should vacate
22 the stay imposed in that order.

23 2) Pursuant to the order of the Fourth Judicial District Court of the State of
24 Nevada, entered on July 3, 2014, the judgment of conviction and death sentence which is the
25 subject of Mr. Rhyne's amended petition for writ of habeas corpus pending in this Court,
26 Docket No. 52, has been vacated.

Pursuant to Fed. R. Civ. P. 25(d), Attorney General Adam Paul Laxalt is automatically substituted for former Attorney General Catherine Cortez Masto, and Warden Renee Baker is substituted for former Warden E. K. McDaniel as respondents in this matter.

1 3) In a Memorandum of Plea Agreement, filed in the Fourth Judicial District
2 Court of the State of Nevada on September 30, 2014, Mr. Rhyne and the State of Nevada
3 agreed upon a disposition of the criminal charges, requiring Mr. Rhyne to plead guilty to one
4 count of second degree murder. On December 18, 2014, the Fourth Judicial District Court
5 of the State of Nevada entered a new Judgment and Sentence, based upon Mr. Rhyne's guilty
6 plea, finding Mr. Rhyne guilty of second degree murder, Nev. Rev. Stat. § 200.030(5), and
7 imposing a sentence of life imprisonment with the possibility of parole, plus restitution and
8 fees. A copy of the Judgment and Sentence is attached to this stipulation and order as
9 Exhibit 1. A Notice of Entry of Order was filed on December 24, 2014. The time for
10 appealing that judgment has expired.

11 4) As the result of the vacation of the judgment previously before this Court, and
12 the entry of a new judgment, this case is now moot, and the Amended Petition, Docket No.
13 52, should be dismissed with prejudice.

14 DATED: April 14, 2015

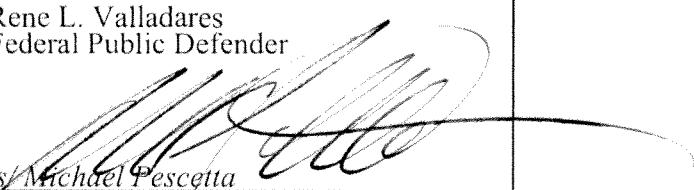
15 Adam Paul Laxalt
16 Attorney General of the State of Nevada

17 
18 /s/ Heather D. Procter 4/16/15
19 HEATHER D. PROCTER
20 Deputy Attorney General

21 Attorneys for Respondents

DATED: April 16, 2015

Rene L. Valladares
Federal Public Defender


17 /s/ Michael Pescetta 4/16/15
18 MICHAEL PESCIETTA
19 Assistant Federal Public Defender

20 Attorneys for Petitioner

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ORDER

Being fully advised in the premises, the Court orders that the stay imposed in its previous order, Docket No. 79, is hereby vacated. The Amended Petition for a Writ of Habeas Corpus by a Person in State Custody, Docket No. 52, is dismissed with prejudice. The Clerk will enter judgment accordingly.

DATED this 21st April, 2015.

Hon. Larry R. Hicks
Senior United States District Judge

Hon. Larry R. Hicks
Senior United States District Judge

EXHIBIT 1

EXHIBIT 1

1 Case No. CR-FD-98-7392

2 Dept. No. 1

FOURTH JUDICIAL DISTRICT COURT
FILED IN OPEN COURT

Date: 12-18-14

Time: 1:55pm

Clerk: JK

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6 IN THE FOURTH JUDICIAL DISTRICT COURT

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STATE OF NEVADA, COUNTY OF ELKO

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10 THE STATE OF NEVADA,
Plaintiff,

JUDGMENT AND SENTENCE

11 VS.

12 KELLY EUGENE RHYNE,
Defendant.

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On the 30th day of September, 2014, the above-named Defendant, Kelly Eugene Rhyne, [who is further described as follows: Date of Birth: September 25, 1959; (age 55); Place of Birth: Sacramento, CA] pleaded guilty to the crime described below and as more fully set forth within the Criminal Information filed herein. Legal counsel present at the Defendant's arraignment were, GARY TAYLOR, ESQ., Assistant Federal Public Defender, representing the Defendant, and RICHARD W. SEARS, ESQ., Special Prosecutor for Elko County District Attorney, representing the State.

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DESCRIPTION OF CONVICTION

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SECOND-DEGREE MURDER, A FELONY AS DEFINED BY N.R.S. 200.030(5)

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On the 18th day of December, 2014, the above-named Defendant appeared before this Court for the purpose of sentencing and entry of a final judgment of conviction in this

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1 matter. This Court, the State and the Defense Counsel previously received a Pre-Sentence
2 Report prepared by the Division of Parole and Probation. The above-named Defendant
3 was personally present at the sentencing. Legal counsel present at the Defendant's
4 sentencing were GARY TAYLOR, ESQ., Assistant Federal Public Defender, representing the
5 Defendant, and RICHARD W. SEARS, Esq., Special Prosecutor for Elko County District
6 Attorney, representing the State. Also present in court was LISA ELLIOTT, a representative
7 of the Division of Parole and Probation.

8 After hearing from all parties and allowing the Defendant an opportunity to
9 personally address the Court, this Court finds that the appropriate judgment in this case is
and shall be as follows:

SENTENCE TERMS

10
11 For the conviction of SECOND-DEGREE MURDER,
12 the Defendant is sentenced to a maximum term
13 of LIFE in the Nevada Department of
Corrections with a minimum parole eligibility
of ONE HUNDRED TWENTY (120) months, with
credit for time previously served in the amount
of 5891 days.

ENTRY OF JUDGMENT

14
15 **IT IS THEREFORE ADJUDGED** that the Defendant is guilty of said offense as
charged and convicted, and is sentenced to serve for SECOND-DEGREE MURDER, the
16 Defendant is sentenced to a LIFE in the Nevada Department of Corrections with a minimum
17 parole eligibility of ONE HUNDRED TWENTY (120) months, with credit for time previously
18 served in the amount of 5891 days.

19
20 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay restitution in the
amount of \$2,454.99 to Morris Brown, jointly and severally, with James Mendenhall, on
behalf of the victim, who paid the victim's burial costs.

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22 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay a Twenty-Five
Dollar (\$25.00) administrative assessment fee to the Elko County Clerk, Elko, Nevada.

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1 IT IS HEREBY FURTHER ORDERED AND THE COURT ADVISES
2 DEFENDANT that pursuant to NRS 176.063, all administrative assessment fees, all other
3 fees, and all fines constitute a lien pursuant to NRS 176.275; and that should the Defendant
4 fail to satisfy said lien(s), collection efforts may be undertaken against the Defendant
5 pursuant to the laws of this State.

6 DATED this 18th day of December, 2014.
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HON. NORMAN C. ROBISON
DISTRICT COURT JUDGE

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 18th day of December, 2014, I personally hand delivered a file stamped copy of the foregoing **JUDGMENT AND SENTENCE** addressed to:

Dept. of Parole and Probation
3920 E. Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[In Open Court]

Gary Taylor
Asst. Federal Public Defender
411 E. Bonneville Avenue, Suite 250
Las Vegas, NV 89101
{1 File Stamped Copy}
[In Open Court]

Elko County Sheriff's Office
775 W. Silver Street
Elko, NV 89801
{1 Certified Copy and 1 File Stamped Copy}
[Box in Clerk's Office]

Richard W. Sears, Esq.
Special Prosecutor for
Elko County District Attorney
333 Murry
Ely, NV 89301
{1 File Stamped Copy}
[In Open Court]

Jules Louis Schwenter

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 18th day of December, 2014, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a file stamped copy of the foregoing

JUDGMENT AND SENTENCE addressed to:

Catherine Cortez Masto
Nevada Attorney General
Heroes' Memorial Building
100 N. Carson Street
Carson City, NV 89710-4717

Nevada Department of Corrections
Offender Management Division, Sentence Management
P.O. Box 7011
Carson City, NV 89702

Julianna Greenley